

Scottish Construction Safety Group

Minutes of the meeting of the 24th of January 2019

There were 33 members and guests present. Robert Bradford introduced Charlotte O'Kane an associate with Pinsent Masons who was giving an update.

Charlotte mainly works on health and safety law dealing with HSE investigations, appeals, accident investigations and reviews policies and procedures as well as working on commercial litigation.

Fee for intervention (Ffi) is applied by the HSE when a material breach of health and safety law occurs in an inspectors opinion. The appeals process has changed after a review in March 2017 due to the original process being legally challenged by a company called OCS who had their notice withdrawn and expenses paid. This has resulted in an improved process not relying totally on HSE personnel hearing the appeal with the main changes being that the appeal is heard by a lay panel with an HSE Chairperson, there is an improved process for disclosure of information, the panel only considers information available to the inspector at the time, HSE arranges the time and place for the review, the panel can arrange a meeting with witnesses which is not a hearing, the HSE can add costs to the Ffi if they win, the decision is non-binding (if the company still doesn't pay the case can be heard through the courts. There is a 21 day period to challenge the Ffi notice. Always ensure that your accounts department discuss any invoice from the HSE.

The HSE has never agreed that payment of the Ffi is not an admission of guilt therefore companies should always state they are paying the costs but that it is not an admission of guilt.

Enforcement notices. In the case HSE v Chevron. In April 2013 the HSE visited an offshore drilling rig and found corrosion in a staircase, they then carried out an impromptu test using fire axe and as a result of the findings served a notice. Chevron then tested the staircase using the relevant British Standard and the staircase passed. Chevron challenged the notice and the tribunal had to consider whether they should take in to account evidence not known by the inspector. They looked at the information and cancelled the notice. HSE appealed and were unsuccessful. This conflicted with another case in England and the HSE then went to the Supreme court who agreed all information should be considered. It has still not decided who is paying the costs for this.

For notices there is a 21 day appeals process, from a question asked we were advised that at a tribunal the challenger can win his case against the HSE but the HSE, or tribunal can amend the wording of the notice.

Cases

An 86 year old died from Legionnaires disease and it was found that the taps in the care home bathroom were the culprit. The company were charged under Section 3 of the HSWA and were fined £13 million as they had a turnover of £198 million and pre-tax profit of £51 million costs of £151,000 were also awarded.

Costain and Galliford Try each with a turnover in excess of £1 billion whilst upgrading a water treatment works had personnel trapped in a rotating screen resulting in a court appearance with a fine of £1.4 million each. They had systems in place but had neglected to take in to account concerns raised by the worker to his supervision. The court wanted to create an impact as the work was easily managed.

Balfour Beatty Utility Solutions failed to keep HAVS exposure as low as reasonably practicable and had no risk assessments. They reported a significant number of cases. They were fined £500,000 under section 2 of the HSWA and regulation 5 of RIDDOR (not reporting cases as they had no knowledge). They had carried out health surveillance but had not acted on the early warnings given by this.

A Tesco driver reversing in to a loading bay hit a person. Their turnover is £38.6 billion and profit £1 billion were fined £1.6 million with £50,000 costs under section 3 of the HSWA and regulation 3 of the Management regulations as they had not followed their own procedure. Since the incident Tesco has redesigned the parking arrangement as well as installing barriers

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A worker was crushed by a reversing lorry as a dock leveller had become stuck and they had known about this. They were fined £2 million.

There have been a number of recent personal prosecutions including; Jonathan Gaskell who was imprisoned for 8 months after a worker was killed in an inadequately guarded baling machine. The guarding was still inadequate 5 years later. The company was fined £700,000 with £100,000 costs.

Michael Allen whose company was fined £267,000 after a worker fell whilst repairing a barn roof. The company was put in to liquidation and started a new company so that the fine was not paid. The case was investigated by the Insolvency Service and Michael Allan was banned from being a company director for six years.

There have been changes to the Sentencing Council Guidelines in England and Wales with new guidance being issued regarding sentences for manslaughter offences. For example a one to eight year sentence will apply if the defendants at the Hillsborough case are found guilty.

HSE inspectors are overstretched as a result investigations are taking far longer. There have been a lot of changes in the Procurator Fiscals office. The head left last year and the replacement has now moved on resulting in a temporary head being in charge. The Clutha Vaults enquiry will tie up the PF office for a long time. Decisions on cases is now taking far longer.

Robert thanked Charlotte for her presentation.

There was one other item of business

The Coniac Workplace Health Safety and Welfare regs refer tot the size of sinks does anybody know where this size came from.

Dates of forthcoming meetings in the Hilcroft Hotel Whitburn at 13:30 are

21/2/19 John Bissett CITB – update on CITB and Site Safety Plus

21/3/19 Richard Cassidy SGB Scaffolding

18/4/19

23/5/19

Speakers will be announced in due course.

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